



IMMIGRATION AND REFUGEE BOARD
(REFUGEE PROTECTION DIVISION)

LA COMMISSION DE L'IMMIGRATION
ET DU STATUT DE RÉFUGIÉ
(SECTION DE LA PROTECTION DES RÉFUGIÉS)

IN PRIVATE
HUIS CLOS
TA4-05464

s.19(1)

CLAIMANT(S)

DEMANDEUR(S)

DATE(S) OF HEARING

November 1, 2005

DATE(S) DE L'AUDIENCE

DATE OF DECISION

November 8, 2005

DATE DE LA DÉCISION

CORAM

B. Wong

CORAM

FOR THE CLAIMANT(S)

POUR LE(S) DEMANDEUR(S)

REFUGEE PROTECTION OFFICER

Nil

AGENT DE PROTECTION DES RÉFUGIÉS

DESIGNATED REPRESENTATIVE

Nil

REPRÉSENTANT DÉSIGNÉ

MINISTER'S COUNSEL

Nil

CONSEIL DE LA MINISTRE

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a 36-year-old citizen of Saint Lucia, is seeking refugee protection pursuant to sections 96 and 97(1) of the Immigration and Refugee Protection Act¹ (IRPA).

Allegations

The claimant alleges as follows:

She fears persecution at the hands of her ex-common-law partner, by reason of her membership in a particular social group, namely, lesbian women subjected to domestic abuse. Accordingly, I took into consideration the Chairperson's Gender Guidelines² before rendering a decision in this claim. In addition, she claims to be a person in need of protection because she would be subjected personally to a risk to her life or to a risk of cruel and unusual treatment or punishment or to a danger of torture in Saint Lucia.

The claimant met in 1997 and lived with him from 1998 to 2001. They have a daughter who was born in 1999. lost his job, started drinking and abusing the claimant in 2000. He pushed her down a flight of stairs in 2000. She required medical treatment and therapy as a result of her injuries. The claimant met

¹ Immigration and Refugee Protection Act, S.C. 2001, c. 27.

² Guidelines on Women Refugee Claimants Fearing Gender-Related Persecution: Guidelines issued by the Chairperson pursuant to section 65(3) of the Immigration Act, IRB, Ottawa, March 9, 1993. Update: November 1996, as continued in effect by the Chairperson on June 28, 2002, pursuant to Section 159(1)(h) of the Immigration and Refugee Protection Act.

her therapist, while rehabilitating. They started a lesbian relationship. continued to abuse her physically, emotionally and sexually. She went to Grenada but he s.19(1) found her. She fled Saint Lucia and came to Canada in 2001. She made her claim for refugee protection about three years later in 2004.

Determination

The determinative issues in this claim are whether the claimant's fear is well-founded and state protection.

I am satisfied by reason of a certified copy of her passport³ that the claimant is who she claims to be and that she is a citizen of Saint Lucia.

I find that the claimant is not a Convention refugee, as she does not have a well-founded fear of persecution for a Convention ground in Saint Lucia. I also find that the claimant is not a person in need of protection in that her removal to Saint Lucia would not subject her personally to a risk to her life or to a risk of cruel and unusual treatment or punishment, and in that there are no substantial grounds to believe that her removal to Saint Lucia will subject her personally to a danger of torture.

Analysis

The claimant must establish that the fear is reasonable, i.e., is justified considering the objective situation.⁴ In other words, she must establish that her fear of persecution

³ Exhibit R-2, copy of passport in Citizenship and Immigration Canada (CIC) documents.

⁴ Naredo v. Canada (Minister of Employment and Immigration) (2000), 7 Imm. L.R. (3d) 291 (F.C.T.D.).

has a valid basis.⁵ The subjective fear relates to the existence of a fear of persecution in the mind of the claimant. The objective basis requires that there be a valid basis for the fear.⁶

I find that the claimant does not have a subjective fear. Her behaviour and actions do not support a finding of having a subjective fear. I am not satisfied with her explanations that she did not know that she could have sought protection in Canada when she first arrived in 2001, and elsewhere where she had visited prior to coming to Canada. The claimant's Personal Information Form⁷ (PIF) shows that she was in the United States (U.S.) in 2000, Martinique in 2000 and Grenada in 2001 before coming to Canada. Her failure to make a claim for refugee protection in the U.S. and elsewhere where protection might have been sought before arriving in Canada persuades me that her fear is not well-founded. I am guided by the Federal Court decision in *Ilie*⁸ where McKay J. stated:

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In my view, it may also assume that a country adhering to an international convention will meet its obligation to implement the convention within its own territory if that be required, unless evidence to the contrary is adduced.

[T]he tribunal was entitled to consider his failure to claim refugee status in other countries while travelling from July 1992 to January 1993 in Europe, and to consider how the applicant's evidence was to be weighed in light of that. In so doing it here concluded that his travelling for six months or so without seeking refugee status negated his evidence of a fear of persecution if he were returned to Romania. . . I am not persuaded

⁵ *Lai v. Canada (Minister of Employment and Immigration)* (1989), 8 Imm. L.R. (2d) 245 (F.C.A.).

⁶ *Rajudeen v. Canada (Minister of Employment and Immigration)* (1984), 55 N.R. 129 (F.C.A.).

⁷ Exhibit C-1, Personal Information Form, addendum to Question 12 – Travel.

⁸ *Ilie, Lucian Ioan v. M.C.I.* (F.C.T.D., no. IMM-462-94), MacKay, November 22, 1994, at 3-5.

that in the circumstances of the case as weighed and considered by the tribunal, this inference or its conclusion was unreasonable.

Even if I had found the claimant to have a subjective fear, which I did not, an objective analysis of that fear, in light of the situation in Saint Lucia, persuades me that her fear is not well-founded, i.e., that it lacks an objective basis. Credible and trustworthy documentary evidence that I refer to below satisfies me that state protection is available in Saint Lucia for lesbian women subjected to domestic abuse. Accordingly, I find that there is no objective basis for her fear.

State Protection

Reliable documentary evidence satisfies me that state protection was and is available in Saint Lucia for the claimant. Saint Lucia is a functioning democracy,⁹ and thus the presumption of state protection applies. The claimant can rebut this presumption by providing “clear and convincing” evidence that the state of Saint Lucia is unable or unwilling to protect her.¹⁰ For the reasons that follow, I find that the claimant failed to rebut this presumption.

In oral testimony, the claimant testified that the police came to investigate after pushed her down a flight of stairs. I asked to see copies of the police and medical reports pertaining to the incident as requested by the screening form.¹¹ The claimant

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⁹ Exhibit R-1, RPD Information Package, revised May 2004, tab 1.2, Europa World Year Book, 2003.

¹⁰ Canada (Attorney General) v. Ward, [1993] 2 S.C.R. 689.

¹¹ Exhibit R-3, Screening Form – Instructions to Counsel/Client.

explained that she was unable to obtain the medical reports because her doctor was on an extended leave. The claimant explained that she did not consider calling the hospital where she was treated for such reports. Further, the claimant explained that the police did not protect her because they failed to arrest The claimant testified that her abuser threatened to kill her if she reported to the police again. In further oral testimony, the claimant testified that she feared because she had made a fool of him. By having an affair with a woman, the claimant feared that her abuser was bent on teaching her a lesson. found out about her lesbian relationship in 2001, and beat her up again. She explained that she was afraid to go to the police for protection because she believed that the police would not be sympathetic to her plight. She testified that the police in Saint Lucia are discriminatory towards gays and lesbians.

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I am not persuaded by her testimony and evidence. I find the documentary evidence more credible and trustworthy and give it more weight than I do the claimant's opinion about state protection. I find the documentary evidence more current and reliable than I do the claimant's opinion. I recognize that domestic abuse of women and discrimination against gays and lesbians are serious problems in Saint Lucia. The documentary evidence, however, shows that Saint Lucia is making serious efforts to address these problems.¹² Saint Lucia has a stable government and is in control of its

¹² Canada (Minister of Employment and Immigration) v. Villafranca (1992), 18 Imm. L.R. (2d) 130 (F.C.A.).

territories. It has a national police force and an independent judiciary. Accordingly, Saint Lucia is governed by the rule of law. There are legislative, enforcement and correctional institutions and arms of the different levels of government to protect victims of domestic abuse. It is known that such victims are entitled to state protection in Saint Lucia.¹³

The Domestic Violence (Summary Proceedings) Act, 1994 was an initial legislative step towards addressing the domestic abuse problem in St. Lucia.¹⁴ The Act allows a judge to issue protection orders that could prohibit an abuser from entering or remaining in the same place as the victim. It also allows a judge to remove an offender's name from lease and rental agreements with the effect that abusers would no longer have rights and be able to live in the same residence as the victim.¹⁵ After this Act was enacted, there has been an increase in public awareness and improvements made. The Ministry of Home Affairs and Gender Relations carried out a nationwide public awareness and education program in 2003. The Royal Saint Lucia Police Force (RSLPF) established a special unit to deal with domestic violence in 2002. Police response has also improved due to the amount of gender sensitivity training provided to all levels of

¹³ Exhibit R-1, tab 2.1, United States Department of State, Country Reports on Human Rights Practices 2003, February 25, 2004.

¹⁴ Exhibit R-1, tab 3.6, Response to Information Request, number LCA21709.E, August 25, 1995.

¹⁵ Exhibit R-1, tab 2.1, United States Department of State, Country Reports on Human Rights Practices 2003, February 25, 2004.

the police force.¹⁶ The Women's Support Centre, a government shelter for abused persons, became engaged with community outreach programs that included visits to schools, health centres, and community centres.

The documentary evidence¹⁷ also shows that although homosexuality is illegal and not condoned in Saint Lucia, there is no official prejudice directed at homosexuals by the country's judicial system. For criminal prosecutions in which a homosexual has been the victim of assault, the fact that she is homosexual would not be a factor in whether or not the courts administer justice.

The claimant has the burden to show that she made a determined effort to seek state protection.¹⁸ I find that she did not make a determined effort. On the sole occasion when the claimant called the police after she was pushed down a flight of stairs, before she became a lesbian, she testified that the police was responsive and investigated. Thus, I find that it is unreasonable for the claimant not to have made a greater effort to seek police protection or the protection of any state authority, notwithstanding her fear of being discovered that she has become a lesbian. Based on the evidence, I find, on balance, that the claimant was not a lesbian, but a bisexual woman subjected to domestic

¹⁶ Exhibit R-1, tab 3.0, Response to Information Request, number LCA42712.E, May 25, 2005.

¹⁷ Exhibit R-1, tab 5.1, Response to Information Request, number LCA36464.E, February 23, 2001.

¹⁸ Canada (Minister of Citizenship and Immigration) v. Kadenko (1996), 143 D.L.R. (4th) 532(F.C.A.); Alkuhali, Hasan Dhaifullah v. M.C.I (F.C. no. IMM-4320-02), Blanchard, November 7, 2003, 2003 FC 1307.

abuse. Thus, I find it is unreasonable for the claimant not to have taken additional steps or measures to access the protection of the state of Saint Lucia that was and is available to her. The claimant is required to show that she has exhausted all avenues of protection. In Szucs,¹⁹ the Federal Court held that the claimant should take reasonable steps to ensure her protection. The claimant, in this case, did not take all reasonable steps. She ought to have shown that she has taken all steps reasonable in the circumstances before seeking protection in Canada.

I find the documentary evidence much more persuasive than I do the claimant's opinion. Thus, it would not be unreasonable for her to return to Saint Lucia to seek protection there. I recognize that no government can guarantee the protection of all of its citizens at all times.²⁰ What is necessary is that the state be reasonably forthcoming with serious efforts to protect.²¹ Canada's protection for the claimant is not necessary.²² I am not convinced within the preponderance of probability category, as I must be,²³ that the state of Saint Lucia would not be reasonably forthcoming with serious efforts to protect the claimant if she were to return to Saint Lucia and approach the state for protection.

¹⁹ Szucs, Sandor v. M.C.I. (F.C.T.D., no. IMM-6248-99), Blais, October 3, 2000.

²⁰ Canada (Minister of Employment and Immigration) v. Villafranca (1992), 18 Imm. L.R. (2d) 130 (F.C.A.) at 132-133.

²¹ Canada (Minister of Employment and Immigration) v. Villafranca (1992), 18 Imm. L.R. (2d) 130(F.C.A.) at 132-133.

²² Szorenyi, Gabor v. M.C.I. (F.C., no. IMM-2817-02), O'Keefe, November 25, 2003, 2003 FC 1382.

²³ Xue, Jian Fei v. M.C.I. (F.C.T.D., no. IMM-4477-99), Rothstein, October 23, 2000.

Conclusion

For the above reasons, I reject this claim to refugee protection and find that the claimant is not a Convention refugee and not a person in need of protection within the meaning of sections 96 and 97 of the IRPA.²⁴

"B. Wong"
B. Wong

DATED at Toronto this 8th day of November, 2005.

²⁴ Immigration and Refugee Protection Act, S.C. 2001, c. 27.